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8 **UNITED STATES BANKRUPTCY COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10 In re:

11 RAUL VELASQUEZ and
12 ROSALVA VELASQUEZ,
13 Debtors.

Case No. 09-17155-A-7

Chapter 7

DC No. KDG-3

Date: December 14, 2010

Time: 1:30 p.m.

Place: U.S. Bankruptcy Court
1300 18th Street, Suite A
Bakersfield, California

Judge: Whitney Rimel

17 **MOTION FOR ORDER AUTHORIZING**
18 **TRUSTEE TO SELL REAL PROPERTY**

19 **TO THE HONORABLE WHITNEY RIMEL, UNITED STATES BANKRUPTCY**
20 **JUDGE:**

21 **I. INTRODUCTION**

22 The Trustee moves the Court for authority to sell real property in Kern County, owned
23 by Raul Velasquez ("Debtor") as his sole and separate property, and Octavio Botello, and Jose
24 Botello, all in joint tenancy. The Trustee listed the property for sale initially for \$265,000.00
25 over a year ago. The Trustee received an all cash offer of \$72,000.00 and has accepted it
26 pending Court approval. The sale is subject to overbid at the hearing. The sale is expected to
27 yield approximately \$21,333.00 for distribution by the Trustee.
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1 **II. JURISDICTION AND AUTHORITY**

2 The Court has jurisdiction under 28 U.S.C. Section 1334 and 11 U.S.C. Section 363.
3 This is a core matter under 28 U.S.C. Section 157(b)(2)(A) & (N).

4 A trustee, "after notice and a hearing, may use, sell or lease, other than in the ordinary
5 course of business, property of the estate." 11 U.S.C. §363(b)(1). In determining whether to
6 allow a sale, a Bankruptcy Court must determine that the sale is supported by a showing of "good
7 business judgment." *In re Walter*, 83 B.R. 14, 20 (9th Cir. BAP 1988)); *In re Lionel Corp.* 722
8 F.2d 1063, 1071 (2nd Cir. 1983). The decision of whether to authorize a sale pursuant to 363(b)
9 lies within the sound discretion of the Bankruptcy Court. *In re Lionel Corp.*, *supra* at page 1066.

10 **III. FACTUAL BACKGROUND**

11 Jeffrey Vetter is the Trustee in the Chapter 7 case. Debtor filed for relief under Chapter
12 7 of the Bankruptcy Code on July 28, 2009.

13 **The Property.** Debtor's estate includes real property described by Debtor in his
14 *Amended Schedule A- Real Property* as "Vacant Land: 8710 Fairview Road, Bakersfield, CA
15 93307." The property is Kern County Assessors Parcel Number 178-020-38 (the "Real
16 Property"). The Real Property is owned in joint tenancy by Debtor, Octavio Botello, and Jose
17 Botello. Octavio Botello and Jose Botello, through counsel, consented to the sale of the co-
18 owned property, so that the Trustee did not need to file an adversary proceeding under §363(h)
19 and Bankruptcy Rule 7001(3). The Trustee agreed to reimburse the Botellos for the estate's 1/3
20 share of property taxes paid by the Botellos post-petition. See Exhibits "B" and "D." The
21 estate's share is about \$607.34.

22 **Proposed sales price and terms.** Goldberg Properties ("Buyer") has offered to
23 purchase the Real Property for \$72,000.00 in an all cash offer. The sale will yield
24 approximately \$21,333.00 for distribution by the estate based on the Trustee's calculation. The
25 Trustee believes that \$72,000.00 represents the fair market value of the property and the best
26 price obtainable under the conditions of Debtor's Chapter 7 case. The Trustee marketed the
27 Real Property for almost a year, since engaging Diana Ybarra in November 2009. However,
28 the sale of the Real Property is subject to higher and better bids at the time of the hearing.

1 Buyer and the Trustee entered into a *Vacant Land Purchase Agreement and Joint*
2 *Escrow Instructions*, and *Counter Offer 1* ("the Contract"), filed as Exhibit "A" to the *Exhibits*
3 *in Support of Motion for Order Authorizing Trustee to Sell Real Property*, concurrently
4 herewith.

5 Buyer paid a \$1,000.00 deposit, which is being held in an escrow account. The Trustee
6 is informed that Buyer intends to pay the balance of the purchase price into escrow
7 immediately upon Court approval of the sale. The Trustee expects that the sale will close within
8 30 days after the hearing.

9 **Liens, encumbrances, and exemptions.** According to Debtor' Schedules of Assets
10 and Liabilities, and the Trustee and Diana Ybarra's investigation, the Real Property is not
11 encumbered by a deed of trust. Public tax records indicate that taxes are due in the amount of
12 \$815.15. See Exhibit "C." Debtor did not claim an exemption regarding the Real Property.
13 Neither Debtor, Octavio Botello, or Jose Botello reside at the Real Property.

14 **Broker commission.** The Trustee obtained authority for Diana Ybarra at Miramar Real
15 Estate Group to market the Real Property by *Order Authorizing the Employment of Real Estate*
16 *Broker* filed November 19, 2009. Under the Order, subject to further Court approval, Miramar
17 Real Estate Group would receive a commission of up to 6% of the purchase price upon
18 consummation of a sale of the Real Property. Here, Miramar Real Estate Group is seller's agent
19 only, and would receive a 3% commission. The Trustee requests authority to pay both buyer
20 and seller's broker \$2,160.00 each in commissions, or 3% each of the final sales price upon
21 overbid.

22 **Benefit to the estate.** The Trustee believes that the sale of the Real Property to Buyer
23 is in the best interest of the estate because it will yield funds to be distributed to creditors.

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1 The Trustee's belief is based on the following calculation:

2 Offer:	\$ 72,000.00
3 Approximate Amount of Secured Claims:	\$ 0.00
4 Debtor's Exemption	\$ 0.00
5 Approximate Cost of Sale (includes taxes)	<u>\$ 8,000.00</u>
6 Proceeds of sale:	\$ 64,000.00

7 **Approximate Amount to be Paid to Estate (1/3 of proceeds): \$ 21,333.00**

8 In his business judgment, the Trustee believes that sale of the Real Property under the
9 terms described in this Motion is in the best interest of the estate. The sale allows him to
10 liquidate a significant asset of the estate, and to move forward with the administration of the
11 estate.

12 **IV. CONCLUSION AND PRAYER FOR RELIEF**

13 The Trustee accepted a offer to purchase the Real Property based on the facts of
14 Debtors' case. The sale, if approved, will result in approximately \$21,333.00 being made
15 available to pay claims, but the sale is subject to higher and better bids at the time of the
16 hearing. The Trustee represents that the sale is an appropriate exercise of his business
17 judgment and requests court approval.

18 WHEREFORE, Trustee prays that:

- 19 1. the Motion be granted;
- 20 2. he be authorized to sell the Real Property to Buyer or nominee for \$72,000.00,
21 subject to higher and better bids at the hearing;
- 22 3. he be authorized to pay from escrow (a) liens and encumbrances of record, (b)
23 closing costs, and (c) broker commissions based on the final sales price;
- 24 4. he be authorized to execute all documents necessary to effectuate the sale of the
25 Real Property to Buyer, or to the highest bidder at the hearing;
- 26 5. he be authorized to distribute Octavio Botello's 1/3 share, and Jose Botello's 1/3
27 share of the proceeds from escrow, after payment of items described at no. 3 above;

1 6. he be authorized to reimburse the Botellos \$607.34 for the estate's share of
2 property taxes they paid post-petition; and

3 7. for such other relief as the court determines is just and proper.

4 Dated: November 16, 2010

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COOPER, ROSENLIB & KIMBALL, LLP

By 

LISA HOLDER, Attorneys for
Jeffrey Vetter, Chapter 7 Trustee